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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,147	02/27/2004	Joseph L. Hellerstein	YOR920030548US1 (590.126)	9276
35195 7590 07/18/2008 FERENCE & ASSOCIATES LLC 409 BROAD STREET PITTSBURGH, PA 15143			EXAMINER ZHE, MENG YAO	
			ART UNIT 2195	PAPER NUMBER
			MAIL DATE 07/18/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/789,147	<b>Applicant(s)</b> HELLERSTEIN ET AL.	
	<b>Examiner</b> MENGYAO ZHE	<b>Art Unit</b> 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-12 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-12, 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-3, 7-12, 16-19 are presented for examination.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following claim languages are unclear and indefinite:

- i) Claim 1, lines 15-17, it is uncertain if duration of outage is actually determined in the end or not <i.e. the claim says it "may be" determined, which is not definite>.

Claims 10 and 19 have the same deficiencies as claim 1 above.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7-12, 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor, Patent No. 5,721,824 (hereafter Taylor) in view of Scholtens et al., Pub No. 2003/0005426 (hereafter Scholtens) further in view of Sreenivasan, Patent No. 5,548,506 (hereafter Sreenivasan).

5. Taylor was cited in the previous office action.

6. As per claims 1, 10, and 19, Taylor teaches the invention as claimed including a computer system comprised of a computer processor configured for executing program instructions stored in computer memory and arrange for automatic construction of a software package change plan data output (Column 2, lines 1-3), said system comprising:

an arrangement for submitting a request for accomplishing a software change to the computer system (Column 4, lines 23-32);

an arrangement for constructing a task graph specifying the order in which tasks accomplishing a software change execute on the system in compliance with data and temporal dependency constraints (Column 2, lines 15-27, 41-44; Column 5, lines 25-41);

an arrangement for creating a software package change plan according to the task graph (Column 2, lines 20-22).

Taylor does not specifically teach wherein the arrangement for creating a software package change plan includes an arrangement for determining operating state transitions that are imposed on software artifacts of the system by execution of the tasks.

However, Scholten teaches wherein the arrangement for creating a software package change plan includes an arrangement for determining operating state transitions that are imposed on software artifacts of the system by execution of the tasks (Para 22, 23) for the purpose identifying system states during upgrades.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Taylor with wherein the arrangement for creating a software package change plan includes an arrangement for determining operating state transitions that are imposed on software artifacts of the system by execution of the tasks, as taught by Scholten, because it helps to identify system states during upgrades.

Taylor in view of Scholten does not specifically teach an arrangement for analyzing the software package change plan, whereby the duration of a system service outage caused by a change plan may be determined.

Sreenivasan teaches an arrangement for analyzing the software package change plan, whereby the duration of a system service outage caused by a change plan may be determined (Para 7, 9) for the purpose of measuring downtime during upgrades.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Taylor in view of Scholten with an arrangement for analyzing the software package change plan, whereby the duration of a system service outage caused by a change plan may be determined, as taught by Sreenivasan, because it measures downtime during upgrades.

7. As per claims 2 and 11, Taylor teaches an arrangement for storing information about packages which may be installed on the system (Column 5, lines 25-30).

8. As per claims 3 and 12, Taylor teaches an arrangement for storing information about current configuration of the system, including packages installed on the system (Column 4, lines 60-65; Column 5, lines 3-11).

9. As per claims 7 and 16, Scholten teaches an arrangement which specifies artifacts and other services being used by the service being analyzed (Para 41).

10. As per claims 9 and 18, Scholten teaches an arrangement which specifies the impact on installation policies as a result of executing the change plan (Para 41, 49, 50).

11. As per claims 8 and 17, Sreenivasan teaches measuring duration of down time due to software upgrade. However, Sreenivasan does not specifically teach an arrangement which specifies the impact on service level agreements as a result of executing the change plan.

However, because service level agreement or SLA is commonly used in a client/server environment, it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to use Sreenivasan's downtime calculation as one way to indicate of how SLA would be affected due to the downtime during software upgrades since SLA typically includes client's preference on a deadline for a job.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-3, 7-12, 16-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MENGYAO ZHE whose telephone number is (571)272-6946. The examiner can normally be reached on Monday Through Friday, 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/  
Supervisory Patent Examiner, Art Unit 2195